

BEFORE THE  
STATE BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID J. BUTCHERT  
11847 South Street  
Cerritos, CA 90703  
Optometrist License No. 10190

Respondent.

Case No. CC-2012-115

OAH No. 2013100323

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 28, 2014

It is so ORDERED April 28, 2014

*Hyunja M. Aneonah, W*  
\_\_\_\_\_  
FOR THE STATE BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 LINDA L. SUN  
Deputy Attorney General  
4 State Bar No. 207108  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**STATE BOARD OF OPTOMETRY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. CC-2012-115

11 **DAVID J. BUTCHERT**  
12 **11847 South Street**  
13 **Cerritos, CA 90703**  
**Optometrist License No. 10190**

OAH No. 2013100323

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14 Respondent.

15  
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
17 entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. Mona Maggio ("Complainant") is the Executive Officer of the State Board of  
20 Optometry ("Board"). She brought this action solely in her official capacity and is represented in  
21 this matter by Kamala D. Harris, Attorney General of the State of California, by Linda L. Sun,  
22 Deputy Attorney General.

23 2. Respondent David J. Butchert ("Respondent") is represented in this proceeding by  
24 attorney Craig S. Steinberg, O.D., J.D., whose address is: 5737 Kanan Road, No. 540, Agoura  
25 Hills, CA 91301-1601.

26 3. On or about September 16, 1993, the Board issued Optometrist License No. 10190 to  
27 Respondent. The Optometrist License was in full force and effect at all times relevant to the  
28

1 charges brought in Accusation No. CC-2012-115 and will expire on June 30, 2015, unless  
2 renewed.

### 3 JURISDICTION

4 4. Accusation No. CC-2012-115 was filed before the Board and is currently pending  
5 against Respondent. The Accusation and all other statutorily required documents were properly  
6 served on Respondent on September 4, 2013. Respondent timely filed his Notice of Defense  
7 contesting the Accusation.

8 5. A copy of Accusation No. CC-2012-115 is attached as Exhibit A and incorporated  
9 herein by reference.

### 10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in Accusation No. CC-2012-115. Respondent has also carefully read,  
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
14 Disciplinary Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
19 the attendance of witnesses and the production of documents; the right to reconsideration and  
20 court review of an adverse decision; and all other rights accorded by the California  
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
23 every right set forth above.

### 24 CULPABILITY

25 9. Respondent admits the truth of each and every charge and allegation in Accusation  
26 No. CC-2012-115, with the exception of the following Cause for Discipline, found on page 14,  
27 paragraph 31 of the Accusation:  
28

1                                   **"SIXTH CAUSE FOR DISCIPLINE"**

2                                   **(Failure to Obtain a Branch Office License)**

3                   Respondent is subject to disciplinary action under Code section 3110, subdivision (a)  
4 on the grounds of unprofessional conduct for violating Code section 3077, as set forth in  
5 paragraphs 21-25, above, which are incorporated by reference. The circumstances are that from  
6 about 2008 to 2012, Respondent failed to notify the Board in writing of his branch office practice  
7 location at 8920 W. Pico Boulevard, Los Angeles, CA 90035 and failed to obtain a branch office  
8 license, prior to engaging in the practice of optometry at that location."

9           10. Respondent agrees that his Optometrist License is subject to discipline and he agrees  
10 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

11                                   **CONTINGENCY**

12           11. This stipulation shall be subject to approval by the State Board of Optometry.  
13 Respondent understands and agrees that counsel for Complainant and the staff of the State Board  
14 of Optometry may communicate directly with the Board regarding this stipulation and settlement,  
15 without notice to or participation by Respondent or his counsel. By signing the stipulation,  
16 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the  
17 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this  
18 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of  
19 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between  
20 the parties, and the Board shall not be disqualified from further action by having considered this  
21 matter.

22           12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
23 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
24 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

25           13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Optometrist License No. 10190 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

**SEVERABILITY CLAUSE**

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

**1. OBEY ALL LAWS**

Respondent shall obey all federal, state, and local laws, governing the practice of optometry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in his arrest, or charges filed against, or a citation issued against Respondent.

**CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

**OTHER BOARD OR REGULATORY AGENCY ORDERS:** If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or

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1 conditions imposed by other agencies, this shall be deemed a violation of probation and may  
2 result in the filing of an accusation or petition to revoke probation or both.

### 3       2.     **QUARTERLY REPORTS**

4       Respondent shall file quarterly reports of compliance under penalty of perjury to the  
5 probation monitor assigned by the Board. Quarterly report forms will be provided by the Board  
6 (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these  
7 reports shall constitute a violation of probation and shall result in the filing of an accusation  
8 and/or a petition to revoke probation against Respondent's optometrist license. Respondent is  
9 responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are  
10 due for each year of probation throughout the entire length of probation as follows:

- 11       • For the period covering January 1st through March 31st, reports are to be completed and  
12       submitted between April 1st and April 7th.
- 13       • For the period covering April 1st through June 30th, reports are to be completed and  
14       submitted between July 1st and July 7th.
- 15       • For the period covering July 1st through September 30th, reports are to be completed and  
16       submitted between October 1st and October 7th.
- 17       • For the period covering October 1st through December 31st, reports are to be completed  
18       and submitted between January 1st and January 7th.

19       Failure to submit complete and timely reports shall constitute a violation of probation.

### 20       3.     **COOPERATE WITH PROBATION MONITORING PROGRAM**

21       Respondent shall comply with the requirements of the Board's probation monitoring  
22 program, and shall, upon reasonable request, report or personally appear as directed.

23       Respondent shall claim all certified mail issued by the Board, respond to all notices of  
24 reasonable requests timely, and submit Reports, Identification Update reports or other reports  
25 similar in nature, as requested and directed by the Board or its representative.

26       Respondent is encouraged to contact the Board's probation monitoring program  
27 representative at any time he has a question or concern regarding his terms and conditions of  
28 probation.

1 Failure to appear for any scheduled meeting or examination, or cooperate with the  
2 requirements of the program, including timely submission of requested information, shall  
3 constitute a violation of probation and may result in the filing of an accusation and/or a petition to  
4 revoke probation against Respondent's Optometrist License.

5 **4. PROBATION MONITORING COSTS**

6 All costs incurred for probation monitoring during the entire probation shall be paid by the  
7 Respondent. The monthly cost may be adjusted as expenses are reduced or increased.  
8 Respondent's failure to comply with all terms and conditions may also cause this amount to be  
9 increased.

10 All payments for costs are to be sent directly to the Board and must be received by the  
11 date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

12 If Respondent is unable to submit costs for any month, he shall be required, instead, to  
13 submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to  
14 submit the costs, including payment amount(s). Supporting documentation and evidence of why  
15 the Respondent is unable to make such payment(s) must accompany this submission.

16 Respondent understands that failure to submit costs timely is a violation of probation and  
17 submission of evidence demonstrating financial hardship does not preclude the Board from  
18 pursuing further disciplinary action. However, Respondent understands that by providing  
19 evidence and supporting documentation of financial hardship it may delay further disciplinary  
20 action.

21 In addition to any other disciplinary action taken by the Board, an unrestricted license will  
22 not be issued at the end of the probationary period and the optometrist license will not be  
23 renewed, until such time as all probation monitoring costs have been paid.

24 **5. FUNCTION AS AN OPTOMETRIST**

25 Respondent shall function as an optometrist for a minimum of 60 hours per month for the  
26 entire term of his probation period.

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1           **6. NOTICE TO EMPLOYER**

2           Respondent shall provide to the Board the names, physical addresses, mailing addresses,  
3 and telephone number of all employers and supervisors and shall give specific, written consent  
4 that the licensee authorizes the Board and the employers and supervisors to communicate  
5 regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is  
6 not limited to, any violation of any probationary term and condition.

7           Respondent shall be required to inform his employer, and each subsequent employer during  
8 the probation period, of the discipline imposed by this Decision by providing his supervisor and  
9 director and all subsequent supervisors and directors with a copy of the Decision and Order, and  
10 the Accusation in this matter prior to the beginning of or returning to employment or within 14  
11 calendar days from each change in a supervisor or director.

12           The Respondent must ensure that the Board receives written confirmation from the  
13 employer that he is aware of the Discipline, on forms to be provided to the Respondent (DG-Form  
14 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are  
15 submitted from the employer directly to the Board. Respondent is responsible for contacting the  
16 Board to obtain additional forms if needed.

17           **7. CHANGES OF EMPLOYMENT OR RESIDENCE**

18           Respondent shall notify the Board, and appointed probation monitor in writing, of any and  
19 all changes of employment, location, and address within 14 calendar days of such change. This  
20 includes but is not limited to applying for employment, termination or resignation from  
21 employment, change in employment status, and change in supervisors, administrators or directors.

22           Respondent shall also notify his probation monitor AND the Board IN WRITING of any  
23 changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for  
24 mailing purposes; however the Respondent must also provide his physical residence address as  
25 well.

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1           **8. COST RECOVERY**

2           Respondent shall pay to the Board a sum not to exceed the costs of the investigation and  
3 prosecution of this case. That sum shall be **\$10,271.75** and shall be paid in full directly to the  
4 Board, in a Board-approved payment plan, within 6 months before the end of the Probation term.  
5 Cost recovery will not be tolled.

6           If Respondent is unable to submit costs timely, he shall be required instead to submit an  
7 explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will  
8 be able to submit the costs, including payment amount(s). Supporting documentation and  
9 evidence of why the Respondent is unable to make such payment(s) must accompany this  
10 submission.

11           Respondent understands that failure to submit costs timely is a violation of probation and  
12 submission of evidence demonstrating financial hardship does not preclude the Board from  
13 pursuing further disciplinary action. However, Respondent understands that by providing  
14 evidence and supporting documentation of financial hardship may delay further disciplinary  
15 action.

16           Consideration to financial hardship will not be given should Respondent violate this term  
17 and condition, unless an unexpected AND unavoidable hardship is established from the date of  
18 this order to the date payment(s) is due.

19           **9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS**  
20 **EXAMINATION**

21           Within 60 calendar days of the effective date of this Decision, or within some other time as  
22 prescribed in writing by the Board, Respondent shall take and pass the California Laws and  
23 Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take  
24 and pass a re-examination as approved by the Board. The waiting period between repeat  
25 examinations shall be at six-month intervals until success is achieved. Respondent shall pay the  
26 established examination fees.

27           If Respondent fails to pass the examination within seven (7) months of the effective date of  
28 this Decision, Respondent shall immediately cease the practice of optometry until the

1 examination has been successfully passed; as evidenced by written notice to Respondent from the  
2 Board.

3 If Respondent has not taken and passed the examination within six months from the  
4 effective date of this Decision, Respondent shall be considered to be in violation of probation.

5 **10. COMMUNITY SERVICES**

6 All types of community services shall be at the Board's discretion, depending on the  
7 violation. Within 30 calendar days of the effective date of this Decision, Respondent shall submit  
8 to the Board, for its prior approval, a community service program in which Respondent provides  
9 free non-optometric or professional optometric services on a regular basis to a community or  
10 charitable facility or agency, amounting to a minimum of 16 hours per month of probation. Such  
11 services shall begin no later than 15 calendar days after Respondent is notified of the approved  
12 program.

13 **11. VALID LICENSE STATUS**

14 Respondent shall maintain a current, active and valid license for the length of the probation  
15 period. Failure to pay all fees and meet CE requirements prior to his license expiration date shall  
16 constitute a violation of probation.

17 **12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE**

18 Periods of residency or practice outside California, whether the periods of residency or  
19 practice are temporary or permanent, will toll the probation period but will not toll the cost  
20 recovery requirement, nor the probation monitoring costs incurred. Travel outside of California  
21 for more than 30 calendar days must be reported to the Board in writing prior to departure.  
22 Respondent shall notify the Board, in writing, within 14 calendar days, upon his return to  
23 California and prior to the commencement of any employment where representation as an  
24 optometrist is/was provided.

25 Respondent's license shall be automatically cancelled if Respondent's periods of temporary  
26 or permanent residence or practice outside California total two years. However, Respondent's  
27 license shall not be cancelled as long as Respondent is residing and practicing in another state of  
28 the United States and is on active probation with the licensing authority of that state, in which

1 case the two year period shall begin on the date probation is completed or terminated in that state.

2 **13. LICENSE SURRENDER**

3 During Respondent's term of probation, if he ceases practicing due to retirement, health  
4 reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender  
5 his license to the Board. The Board reserves the right to evaluate Respondent's request and  
6 exercise its discretion whether to grant the request, or to take any other action deemed appropriate  
7 and reasonable under the circumstances, without further hearing. Upon formal acceptance of the  
8 tendered license and wall certificate, Respondent will no longer be subject to the conditions of  
9 probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon  
10 reinstatement.

11 Surrender of Respondent's license shall be considered a Disciplinary Action and shall  
12 become a part of Respondent's license history with the Board.

13 **14. VIOLATION OF PROBATION**

14 If Respondent violates any term of the probation in any respect, the Board, after giving  
15 Respondent notice and the opportunity to be heard, may revoke probation and carry out the  
16 disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed  
17 against Respondent during probation, the Board shall have continuing jurisdiction and the period  
18 of probation shall be extended until the matter is final. No petition for modification of discipline  
19 shall be considered while there is an accusation or petition to revoke probation or other discipline  
20 pending against Respondent.

21 **15. COMPLETION OF PROBATION**

22 Upon successful completion of probation, Respondent's license shall be fully restored.

23 **16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE**

24 If Respondent sells or closes his office after the imposition of administrative discipline,  
25 Respondent shall ensure the continuity of patient care and the transfer of patient records.  
26 Respondent shall also ensure that patients are refunded money for work/services not completed or  
27 provided, and shall not misrepresent to anyone the reason for the sale or closure of the office  
28 and/or practice. The provisions of this condition in no way authorize the practice of optometry by

1 the Respondent during any period of license suspension.

2 **17. REMEDIAL EDUCATION**

3 Respondent shall take and successfully complete the equivalency of a minimum of 4.0  
4 semester units in each of the following areas pertaining to the practice of Optometry: *Practice*  
5 *Management* and *Ethics*. All course work shall be developed by and taken at the graduate level at  
6 Marshall B. Ketchum University, Southern California College of Optometry ("SCCO"), or an  
7 accredited and approved educational institution that offers a qualifying degree for licensure as an  
8 optometrist, or through a course approved by the Board. The specific course content and  
9 semester units will be determined by the educational institution developing the courses in  
10 cooperation with Board staff. Classroom attendance must be specifically required. Course  
11 content shall be pertinent to the violation and all course work must be completed within one year  
12 from the effective date of this Decision. Successful completion is a grade of "C" or "70%" or  
13 better for any completed course.

14 Within 90 calendar days of the effective date of the Decision, Respondent shall submit a  
15 plan for prior Board approval for meeting these educational requirements. All costs of the course  
16 work shall be paid by the Respondent. Units obtained for an approved course shall not be used  
17 for continuing education units required for renewal of licensure.

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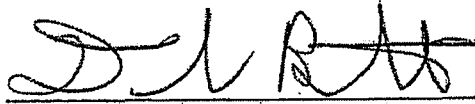
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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Craig S. Steinberg. I understand the stipulation and the effect it  
4 will have on my Optometrist License. I enter into this Stipulated Settlement and Disciplinary  
5 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
6 of the State Board of Optometry.

7  
8 DATED: 3/4/14



9 DAVID J. BUTCHERT  
Respondent

10 I have read and fully discussed with Respondent David J. Butchert the terms and conditions  
11 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve  
12 its form and content.

13 DATED: 3-4-14



14 Craig S. Steinberg  
Attorney for Respondent

15  
16 ENDORSEMENT

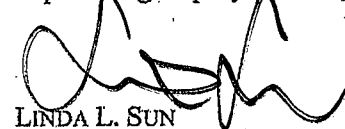
17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
18 submitted for consideration by the State Board of Optometry.

19 Dated:

20 3-4-14

Respectfully submitted,

21 KAMALA D. HARRIS  
Attorney General of California  
22 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General



24 LINDA L. SUN  
Deputy Attorney General  
25 Attorneys for Complainant

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27 LA2013509184  
28 51464252.doc

**Exhibit A**

**Accusation No. CC-2012-115**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 LINDA L. SUN  
Deputy Attorney General  
4 State Bar No. 207108  
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6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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8 **BEFORE THE**  
**STATE BOARD OF OPTOMETRY**  
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**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. CC-2012-115

11 **DAVID J. BUTCHERT**  
12 **4074 Hardwick Street**  
13 **Lakewood, CA 90712**

**A C C U S A T I O N**

14 **Optometrist License No. 10190**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as  
20 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

21 2. On or about September 16, 1993, the State Board of Optometry (Board) issued  
22 Optometrist License Number 10190 to David J. Butchert (Respondent). The Optometrist License  
23 was in full force and effect at all times relevant to the charges brought herein and will expire on  
24 June 30, 2015, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise  
28 indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 3090 of the Code states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

## STATUTORY PROVISIONS

6. Section 652 of the Code states, in pertinent part:

"Violation of this article [Article 6, commencing with Section 650 of the Code] in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and each board shall have all the powers granted therein."

7. Section 655 of the Code states, in pertinent part:

“(a) No person licensed under Chapter 7 (commencing with Section 3000) of this division [optometrist] may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division [registered dispensing optician (“RDO”)].”



1           8.    Section 3006 of the Code states:

2            "As used in this chapter, the term 'advertise' and any of its variants include the use of a  
3 newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill,  
4 poster, bill, sign, placard, card, label, tag, window display, store sign, radio announcement, or any  
5 other means or methods now or hereafter employed to bring to the attention of the public the  
6 practice of optometry or the prescribing, fitting, or sale, in connection therewith, of lenses,  
7 frames, or other accessories or appurtenances."

8           9.    Section 3040 of the Code states:

9            "It is unlawful for a person to engage in the practice of optometry or to display a sign or in  
10 any other way to advertise or hold himself or herself out as an optometrist without having first  
11 obtained a certificate of registration from the board under the provisions of this chapter or under  
12 the provisions of any former act relating to the practice of optometry. The practice of optometry  
13 includes the performing or controlling of any acts set forth in Section 3041. In any prosecution  
14 for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie  
15 evidence of the practice of optometry."

16          10.    Section 3041 of the Code states in pertinent part:

17          "(a) The practice of optometry includes the prevention and diagnosis of disorders and  
18 dysfunctions of the visual system, and the treatment and management of certain disorders and  
19 dysfunctions of the visual system, as well as the provision of rehabilitative optometric services,  
20 and is the doing of any or all of the following:

21                "(1) The examination of the human eye or eyes, or its or their appendages, and the  
22 analysis of the human vision system, either subjectively or objectively.

23                "(2) The determination of the powers or range of human vision and the accommodative  
24 and refractive states of the human eye or eyes, including the scope of its or their functions and  
25 general condition.

26                "(3) The prescribing or directing the use of, or using, any optical device in connection  
27 with ocular exercises, visual training, vision training, or orthoptics.

28          ///

1       “(4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of  
2 contact and spectacle lenses to, the human eye, including lenses that may be classified as drugs or  
3 devices by any law of the United States or of this state.

4       “....”

5       11. Section 3070 of the Code states in pertinent part:

6       “(a) Before engaging in the practice of optometry, each licensed optometrist shall notify the  
7 board in writing of the address or addresses where he or she is to engage in the practice of  
8 optometry and, also, of any changes in his or her place of practice. After providing the address or  
9 addresses and place of practice information to the board, a licensed optometrist shall obtain a  
10 statement of licensure from the board to be placed in all practice locations other than an  
11 optometrist's principal place of practice. Any licensed optometrist who holds a branch office  
12 license is not required to obtain a statement of licensure to practice at that branch office. The  
13 practice of optometry is the performing or the controlling of any of the acts set forth in Section  
14 3041.

15       “...”

16       12. Section 3077 of the Code states in pertinent part:

17       “As used in this section ‘office’ means any office or other place for the practice of  
18 optometry.

19       “...”

20       “(c) On and after October 1, 1959, no optometrist, and no two or more optometrists jointly,  
21 may have more than one office unless he or she or they comply with the provisions of this chapter  
22 as to an additional office. The additional office, for the purposes of this chapter, constitutes a  
23 branch office.

24       “...”

25       “(e) On and after January 1, 1957, any optometrist, or any two or more optometrists,  
26 jointly, who desire to open a branch office shall notify the board in writing in a manner prescribed  
27 by the board.

1       “(f) On and after January 1, 1957, no branch office may be opened or operated without a  
2 branch office license. Branch office licenses shall be valid for the calendar year in or for which  
3 they are issued and shall be renewable on January 1st of each year thereafter. Branch office  
4 licenses shall be issued or renewed only upon the payment of the fee therefor prescribed by this  
5 chapter.”

6       13. Section 3078 of the Code states:

7       “(a) It is unlawful to practice optometry under a false or assumed name, or to use a false or  
8 assumed name in connection with the practice of optometry, or to make use of any false or  
9 assumed name in connection with the name of a person licensed pursuant to this chapter.  
10 However, the board may issue written permits authorizing an individual optometrist or an  
11 optometric group or optometric corporation to use a name specified in the permit in connection  
12 with its practice if, and only if, the board finds to its satisfaction all of the following:

13       “(1) The place or establishment, or the portion thereof, in which the applicant or applicants  
14 practice, is owned or leased by the applicant or applicants, and the practice conducted at that  
15 place or establishment, or portion thereof, is wholly owned and entirely controlled by the  
16 applicant or applicants. However, if the applicant or applicants are practicing optometry in a  
17 community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code,  
18 this subdivision shall not apply.

19       “(2) The name under which the applicant or applicants propose to operate is in the  
20 judgment of the board not deceptive or inimical to enabling a rational choice for the consumer  
21 public and contains at least one of the following designations: "optometry" or "optometric."  
22 However, if the applicant or applicants are practicing optometry in a community clinic, as defined  
23 in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply.  
24 In no case shall the name under which the applicant or applicants propose to operate contain the  
25 name or names of any of the optometrists practicing in the community clinic.

26       “(3) The names of all optometrists practicing at the location designated in the application  
27 are displayed in a conspicuous place for the public to see, not only at the location, but also in any  
28 advertising permitted by law.

1       “(4) No charges that could result in revocation or suspension of an optometrist’s license to  
2 practice optometry are pending against any optometrist practicing at the location.

3       “(b) Permits issued under this section by the board shall expire and become invalid unless  
4 renewed at the times and in the manner provided in Article 7 (commencing with Section 3145)  
5 for the renewal of licenses issued under this chapter.

6       “(c) A permit issued under this section may be revoked or suspended at any time that the  
7 board finds that any one of the requirements for original issuance of a permit, other than under  
8 paragraph (4) of subdivision (a), is no longer being fulfilled by the individual optometrist,  
9 optometric corporation, or optometric group to whom the permit was issued. Proceedings for  
10 revocation or suspension shall be governed by the Administrative Procedure Act.

11       “(d) If the board revokes or suspends the license to practice optometry of an individual  
12 optometrist or any member of a corporation or group to whom a permit has been issued under this  
13 section, the revocation or suspension shall also constitute revocation or suspension, as the case  
14 may be, of the permit.”

15       14. Section 3101 of the Code states:

16       “‘It is unlawful to advertise by displaying a sign or otherwise or hold himself or herself out  
17 to be an optometrist without having at the time of so doing a valid unrevoked license from the  
18 board.’”

19       15. Section 3109 of the Code states:

20       “‘Directly or indirectly accepting employment to practice optometry from any person not  
21 having a valid, unrevoked license as an optometrist or from any company or corporation  
22 constitutes unprofessional conduct. Except as provided in this chapter, no optometrist may, singly  
23 or jointly with others, be incorporated or become incorporated when the purpose or a purpose of  
24 the corporation is to practice optometry or to conduct the practice of optometry.

25       “‘The terms ‘accepting employment to practice optometry’ as used in this section shall not be  
26 construed so as to prevent a licensed optometrist from practicing optometry upon an individual  
27 patient.

1 "Notwithstanding the provisions of this section or the provisions of any other law, a  
2 licensed optometrist may be employed to practice optometry by a physician and surgeon who  
3 holds a certificate under this division and who practices in the specialty of ophthalmology or by a  
4 health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section  
5 1340) of Division 2 of the Health and Safety Code."

6 16. Section 3110 of the Code states:

7 "The board may take action against any licensee who is charged with unprofessional  
8 conduct, and may deny an application for a license if the applicant has committed unprofessional  
9 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
10 limited to, the following:

11 "(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the  
12 violation of, or conspiring to violate any provision of this chapter or any of the rules and  
13 regulations adopted by the board pursuant to this chapter.

14 "..."

#### 15 REGULATORY PROVISIONS

16 17. California Code of Regulations, title 16 ("CCR"), section 1505 states:

17 "(a) The notification of intention to engage in the practice of optometry which is required  
18 by Section 3070 of the code shall be addressed to the Board at its office in Sacramento.

19 "(b) Such notification of intention to engage in the practice of optometry includes notifying  
20 the Board of intention to accept employment to practice optometry, the name or names of the  
21 optometrist or optometrists, or those who by law may employ an optometrist and the address or  
22 addresses of the office or offices at which the licensee will be employed.

23 "(c) Such notification of intention to engage in the practice of optometry includes notifying  
24 the Board prior to the establishment of any office or offices to practice optometry of the intention  
25 to establish such office or offices and the location or locations to be occupied."

26 18. CCR section 1513 states:

27 "All signs, cards, stationery or other advertising must clearly and prominently identify the  
28 individual optometrist or optometrists."

1 19. CCR section 1514 states:

2 "Where an optometrist rents or leases space from and practices optometry on the premises  
3 of a commercial (mercantile) concern, all of the following conditions shall be met:

4 "(a) The practice shall be owned by the optometrist and in every phase be under his/her  
5 exclusive control. The patient records shall be the sole property of the optometrist and free from  
6 any involvement with a person unlicensed to practice optometry. The optometrist shall make  
7 every effort to provide for emergency referrals.

8 "(b) The rented space shall be definite and apart from space occupied by other occupants of  
9 the premises.

10 "(c) All signs, advertising, and display shall likewise be separate and distinct from that of  
11 the other occupants and have the optometrist's name and the word "optometrist" prominently  
12 displayed in connection therewith.

13 "(d) There shall be no legends as "Optical Department," "Optometrical Department,"  
14 "Optical Shoppe," or others of similar import, displayed on any part of the premises or in any  
15 advertising.

16 "(e) There shall be no linking of the optometrist's name, or practice, in advertising or in any  
17 other manner with that of the commercial (mercantile) concern from whom he/she is leasing  
18 space."

19 **COST RECOVERY**

20 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
21 administrative law judge to direct a licentiate found to have committed a violation or violations of  
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
23 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
24 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
25 included in a stipulated settlement.

26 **FACTS**

27 21. At the times mentioned herein, Respondent had reported his places of practice to the  
28 Board at the following locations: 4074 Hardwick Street, Lakewood, CA 90712; 17 Lakewood

1 Mall, Lakewood, CA 90712; 5685 Woodruff Avenue, Lakewood, CA 90713; and 12300 Seal  
2 Beach Boulevard, Seal Beach, CA 90740. However, Respondent did not report to the Board his  
3 practice location at 8920 W. Pico Boulevard, Los Angeles, CA 90035.

4 22. On or about October 24, 2012, Board investigators conducted an undercover  
5 investigation of Respondent practicing optometry at Optics by Arne located at 8920 W. Pico  
6 Boulevard, Los Angeles, CA 90035. At all times mentioned herein, Optics by Arne was licensed  
7 as a registered dispensing optician (RDO) by the Medical Board of California. Several signs  
8 appeared on all sides of the building offering eyeglass and contact lens examinations. These  
9 signs read: "Independent Doctor of Optometry Enter Thru Suite #B (Rear)," "Eye Glass Exam  
10 \$34.99," "CT Lens Exam \$79.00" and "Optometry Enter in Rear Suite B." No optometrist's  
11 name appeared on any of the signage on the building.

12 23. Pursuant to the signage, the Board investigators attempted to enter through the rear  
13 entrance, but the door was locked. The investigators entered through the front entrance of Optics  
14 by Arne, an optical store which was open for business, and was greeted by Lee C., who worked  
15 for Optics by Arne. One of the investigators (M.C.) asked if an appointment was needed to see  
16 the optometrist. Lee C. took out an appointment book and offered to make the appointment for  
17 Investigator M.C. and informed the investigators that the optometrist only worked there on  
18 Mondays and Thursdays. When Investigator M.C. indicated he would call back for an  
19 appointment, Lee C. gave him a business card which read:

20 "Mon and Thurs Only  
21 No Appt Necessary  
22 1 - 5:30 Mon  
23 10 - 5:30 Thurs

24 **Optometrist**  
25 *Eyeglass Exam \$34.99*  
26 **Contact Lens Exam Staring [sic] at \$79.00**  
27 *All Exams Cash Only*

28 8920 W. Pico Blvd., Suite B  
Los Angeles, CA 90035

(310) 276-4290"

26 Lee C. took out a pen and underlined the words "\$34.99" and "All Exams Cash Only" and  
27 identified Respondent by name as the optometrist. When Investigator M.C. asked Lee C. about  
28

1 what the exam would entail, Lee C. explained that M.C. did not need to have the portion of the  
2 eye exam which employs a puff of air into the eyes and that the exam was just a basic eye exam.

3 24. On or about October 25, 2012, Investigator M.C. dialed the number on the  
4 optometrist business card (310-276-4290) and left a message. Respondent returned his call on  
5 October 26, 2012. During the telephone call, Respondent provided Investigator M.C. the  
6 following information:

7 a. He was paid as an independent contractor to provide optometry services inside  
8 Optics by Arne;

9 b. He was the only optometrist working at Optics by Arne and he was unaware  
10 that any signs or stationery were required to display his name;

11 c. He did not have an account with Department of Water and Power at the Optics  
12 by Arne location;

13 d. He did not have an account for the phone number listed on the optometrist  
14 business card (310-276-4290) and he did not pay the phone bill at the Optics by Arne location;

15 e. He did not have a lease agreement nor did he pay rent for the space inside  
16 Optics by Arne where he provided optometry services; and

17 f. He did not have a branch license to perform optometry services at Optics by  
18 Arne.

19 25. On or about December 13, 2012, Investigator M.C. conducted an in-person interview  
20 with Respondent in the presence of his attorney. Respondent relayed the following pertinent  
21 facts:

22 a. He had provided optometry services at Optics by Arne for three to four years;

23 b. He received a telephone call from Arne C. one day out of the blue asking if  
24 Respondent was looking for extra work. Arne C. explained his optical store had a space in the  
25 back and asked Respondent if he wanted to work there one day a week;

26 c. The optometrist office inside Optics by Arne was already set up for eye exams  
27 with an optometrist's chair, a stand, a microscope, a phoropter, and a tonometer. All of these  
28 pieces of equipment were owned by Arne C.;



1 d. Respondent did not sign a lease or pay rent to anyone for the back office space  
2 inside Optics by Arne;

3 e. All signage related to optometry services on the outside of the building was  
4 already present and was provided by Optics by Arne; Respondent had no control over the  
5 signage;

6 f. Arne C. provided Respondent with the optometrist business cards for use and  
7 distribution;

8 g. Arne C. owned and operated both of the telephone lines for the optics business  
9 and for the optometrist business; Respondent did not answer the telephone line for the optometrist  
10 business; the line was answered by the receptionist who worked for Optics by Arne;

11 h. The receptionist for the optometrist business was not hired or paid by  
12 Respondent; that role was usually performed by Lee C. or the wife of Arne C., Wendy C.;

13 i. When a patient came in to receive optometry services from Respondent, the  
14 patient would see Wendy C. first, who would have the patient complete a patient information  
15 form and ask if the patient was there for an eyeglass or contact lens exam. Then Wendy C. would  
16 quote the price for the exam, and advise the patient that the payment was to be cash only. Wendy  
17 C. would perform a pretest on the patient using an auto refractor, and then turn the patient over to  
18 Respondent. After Respondent performed a complete eye exam on the patient, he would turn the  
19 patient back to Wendy C. with the prescription;

20 j. Although there was a sign which read: "Independent Doctor of Optometry,  
21 Enter through Suite B in Rear," it was Arne C.'s practice to keep the rear door locked so that all  
22 potential optometry patients would have to enter through the front door of the optics business;

23 k. After Respondent terminated his practice at Optics by Arne, Arne C. refused to  
24 turn over the patient records to him.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Prohibited Business Arrangement with RDO)**

27 26. Respondent is subject to disciplinary action under Code section 655, subdivision (a),  
28 on the grounds of unprofessional conduct. The circumstances are set forth in paragraphs 21-25,

1 above, which are incorporated herein by reference, and as follows. From about 2008 to 2012  
2 Respondent had a prohibited membership, proprietary interest, coownership, landlord-tenant  
3 relationship, or profit-sharing arrangement in any form, directly or indirectly, with Optics by  
4 Arne, an RDO, registered with the Medical Board of California pursuant to chapter 5.5 of  
5 division 2 of the Code. Respondent received free rent, free optometric equipment, a free  
6 telephone line, free utilities, free advertising, and free services of Optics by Arne staff members  
7 to answer his phone, make appointments for him, perform pre-examination testing for him, and  
8 allowed his optometry practice to be controlled by Optics by Arne.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Assisting in and Abetting Violations of Optometry Act)**

11 27. Respondent is subject to disciplinary action under Code section 3110, subdivision (a),  
12 on the grounds of unprofessional conduct, in that Respondent directly or indirectly assisted or  
13 abetted Optics by Arne, an RDO, in the violation of the Optometry Practice Act and the Board's  
14 rules and regulations. The circumstances are set forth in paragraphs 21-25, above, which are  
15 incorporated herein by reference and as follows:

16 a. Optics by Arne practiced optometry without a license in violation of Code  
17 section 3040, by controlling Respondent's practice of optometry and its various components, per  
18 Code sections 3041 and 3078, including providing Respondent's working space within the  
19 RDO's premises; all of the optometric equipment for Respondent's use; staff to set appointments,  
20 quote fees, and perform optometric pre-testing; telephone lines and answering services; and  
21 advertising his optometric services, which Respondent aided and abetted by providing eye exams  
22 for Optics by Arne within its RDO premises.

23 b. Optics by Arne advertised the practice of optometry without having a valid  
24 license from the Board in violation of Code section 3101 by advertising on the building where it  
25 was located, "Independent Doctor of Optometry Enter Thru Suite #B (Rear)," "Eye Glass Exam  
26 \$34.99," "CT Lens Exam \$79.00" and "Optometry Enter in Rear Suite B," and distributing  
27 business cards offering the services of an optometrist, which Respondent aided and abetted by  
28 providing eye exams for Optics by Arne and within its RDO premises.

1 c. Optics by Arne advertised the practice of optometry in violation of CCR section  
2 1513 by advertising on the outside of its business location and on business cards the practice of  
3 optometry without prominently identifying the individual optometrist, which Respondent aided  
4 and abetted by providing eye exams for Optics by Arne within its RDO premises.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Failure to Have Control Over Optometry Practice)**

7 28. Respondent is subject to disciplinary action under Code section 3110, subdivision (a)  
8 on the grounds of unprofessional conduct for violating CCR section 1514, as set forth in  
9 paragraphs 21-25, above, which are incorporated by reference. The circumstances are that  
10 Respondent failed to own the optometry practice located inside Optics by Arne, failed to have  
11 exclusive control over his practice, failed to control the patient records, failed to rent a space that  
12 is definite and apart from Optics by Arne, failed to have control over signs and advertising which  
13 are definite and apart from Optics by Arne, failed to have his name prominently displayed in  
14 connection with his practice, and failed to separate his practice in advertising or in any other  
15 manner from Optics by Arne.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Accepted Employment to Practice from Unlicensed Person)**

18 29. Respondent is subject to disciplinary action under Code section 3110, subdivision (a)  
19 on the grounds of unprofessional conduct for violating Code section 3109, as set forth in  
20 paragraphs 21-25, above, which are incorporated herein by reference. The circumstances are that  
21 Respondent directly or indirectly accepted employment to practice optometry from an RDO, who  
22 was not a licensed optometrist.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Failure to Notify Board of Practice Location)**

25 30. Respondent is subject to disciplinary action under Code section 3110, subdivision (a)  
26 on the grounds of unprofessional conduct for violating Code section 3070, subdivision (a) and  
27 CCR section 1505, as set forth in paragraphs 21-25, above, which are incorporated by reference.  
28 The circumstances are that from about 2008 to 2012, Respondent failed to notify the Board in

1 writing of his practice location at 8920 W. Pico Boulevard, Los Angeles, CA 90035 and failed to  
2 obtain a statement of licensure from the Board to be placed at that practice location prior to  
3 engaging in the practice of optometry there, which was not his principle place of practice,.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Failure to Obtain a Branch Office License)**

6 31. Respondent is subject to disciplinary action under Code section 3110, subdivision (a)  
7 on the grounds of unprofessional conduct for violating Code section 3077, as set forth in  
8 paragraphs 21-25, above, which are incorporated by reference. The circumstances are that from  
9 about 2008 to 2012, Respondent failed to notify the Board in writing of his branch office practice  
10 location at 8920 W. Pico Boulevard, Los Angeles, CA 90035 and failed to obtain a branch office  
11 license, prior to engaging in the practice of optometry at that location.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Practicing Optometry under a False or Assumed Name)**

14 32. Respondent is subject to disciplinary action under Code section 3110, subdivision (a)  
15 on the grounds of unprofessional conduct for violating Code section 3078, as set forth in  
16 paragraphs 21-25, above, which are incorporated by reference. The circumstances are that  
17 Respondent practiced optometry and used the false or assumed name, "Optics by Arne." In  
18 addition, Respondent did not own or lease the premises upon which he practiced inside the Optics  
19 by Arne RDO store and did not wholly own and entirely control his optometry practice.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 **(Advertising without using Individual Name)**

22 33. Respondent is subject to disciplinary action under Code section 3110, subdivision (a)  
23 on the grounds of unprofessional conduct for violating CCR section 1513, as set forth in  
24 paragraphs 21-25, above, which are incorporated by reference. The circumstances are that  
25 Respondent advertised his optometric practice on the outside of the Optics by Arne location  
26 without providing his individual name, and used and distributed business cards, which did not  
27 have Respondent's name clearly and prominently identified as an individual optometrist.


28 ///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Optometrist License Number 10190, issued to David J. Butchert;
2. Ordering David J. Butchert to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: August 29, 2013

  
MONA MAGGIO  
Executive Officer  
State Board of Optometry  
Department of Consumer Affairs  
State of California  
Complainant

LA2013509184